

Edward McCutchan (SBN 119376)
SUNDERLAND | McCUTCHAN, LLP
412 Aviation Boulevard, Suite D
Santa Rosa, California 95403
Telephone: (707) 284-5524
Facsimile: (707) 284-5527

Attorneys for Plaintiff and Judgment Creditor
DONALD THORN

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re: Case No.: 13-10923-AJ-7

Javier Agosto and Heidi Erica Alvarez A.P. No.: 13-01103

Debtors./

Donald Thorn

Plaintiff,

v.

Javier Agosto and Heidi Erica Alvarez

Defendants./

**PLAINTIFF DONALD THORN'S
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF HIS SUMMARY
JUDGMENT MOTION**

Date: April 4, 2014

Time: 9:00 a.m.

**Place: 99 South E Street
Santa Rosa, California**

A.P. Filed: August 6, 2013

Trial Date: September 17, 2014

Judge: Alan Jaroslovsky

Plaintiff Donald Thorn submits the following separate statement of undisputed material facts and supporting evidence in support of its summary judgment motion, pursuant to California Code of Civil Procedure § 437c, subd. (b).

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Issue 1 – THE AMENDED JUDGMENT ENTERED BY THE SUPERIOR COURT IS NOT DISCHARGEABLE IN BANKRUPTCY

Moving Party's Undisputed Material Facts and Supporting Evidence:	Opposing Party's Response and Supporting Evidence:
<p>1. Donald Thorn was awarded \$36,829.98 on June 22, 2012 in Sonoma County Superior Court in case number SCV-246852 against Javier Augusto Alvarez and Heidi Erica Alvarez, jointly and severally, for breach of contract, conversion/interference with property (an intentional tort), negligence, common counts and injunctive relief with respect to their conversion of Donald Thorn's assets.</p> <p><u>Evidence in Support of Summary Judgment Motion:</u> Exhibit "1" to the accompanying declaration of Edward McCutchan in support of Donald Thorn's motion for summary judgment; August 5, 2013 Adversary Complaint case number 13-01103.</p>	
<p>2. The Amended Judgment in Sonoma County Superior Court case number SCV-246852 entered on October 10, 2012 awarded plaintiff Donald Thorn \$30,000.00 in attorney's fees against defendants Javier Augusto Alvarez and Heidi Erica Alvarez under Civil Code § 3426 et seq. (California's Uniform Trade Secrets Act)</p> <p><u>Evidence in Support of Summary Judgment Motion:</u> The October 10, 2012 order states that plaintiff is also awarded \$30,000 in attorney's fees against Javier Augusto Alvarez and Heidi Alvarez under California's Uniform Trade Secrets Act. (Civil Code § 3426 et seq.)</p>	
<p>3. Plaintiff Donald Thorn's Judgment and Amended Judgment in Sonoma County Superior Court case number SCV-246852 for conversion and violation of the Uniform Trade Secrets Act (Civil Code § 3426) against the Alvarez defendants where there was an express finding of willful and malicious conduct and an</p>	

PLAINTIFF DONALD THORN'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF HIS

award of attorney's fees under Civil Code § 3426.4 is not dischargeable under 11 U.S.C. § 523(a)(6).

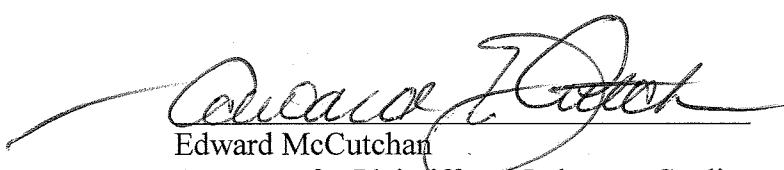
Evidence in Support of Summary Judgment
Motion: Plaintiff Donald Thorn's Adversary Complaint filed on August 5, 2013; In re Lopez (2007) 367 B.R. 99

4. Defendant Javier Agosto Alvarez and Heidi Erica Alvarez's answer to the August 5, 2013 adversary complaint and each of their defenses demonstrates that as a matter of law under In re Lopez (2007) 367 B.R. 99 that the October 12, 2012 Amended Judgment for \$69,442.94 is not dischargeable under 11 U.S.C. § 523(a)(6).

Evidence in Support of Summary Judgment
Motion: Defendants filed answer in case number 13-01103; Exhibit "2" to the accompanying declaration of Edward McCutchan in support of Donald Thorn's motion for summary judgment; August 5, 2013 adversary complaint of Donald Thorn in case number 13-01103.

Date: February 14, 2014

SUNDERLAND | McCUTCHAN, LLP


Edward McCutchan
Attorneys for Plaintiff and Judgment Creditor
DONALD THORN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SONOMA

I am employed in the County of Sonoma, State of California. I am over the age of 18 and not a party to the within action; my present address is: 412 Aviation Boulevard, Suite D, Santa Rosa, California 95403.

On February 14, 2014, I served the foregoing document described as **PLAINTIFF**

DONALD THORN'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT on the parties by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

XX By Regular U.S. Mail. The documents were placed for collection and mailing following ordinary business practice for deposit in the United States Postal Service in a sealed envelope with postage thereon fully prepaid, addressed as stated above.

___ By personal service. I caused each such envelope to be delivered by hand to the addressee(s) as stated above.

___ By facsimile transmitted from (707) 284-5527. The document transmission was reported as complete and without error.

___ By email or electronic transmission. I caused the document to be sent to the persons at the email addresses listed below. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 14, 2014, at Santa Rosa, California.


Kathleen M. Dahl

1 In re: Javier Augusto Alvarez, Heidi Erica Alvarez
2 United States Bankruptcy Court Case No.: 13-10923-AJ-7

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4 Attorneys for Defendants/Debtors: Javier Augusto Alvarez and Heidi Erica Alvarez

5 Carl E. Combs, Esq.
6 Byron T. Nelson, Esq.
7 Law Offices of Carl E. Combs
8 515 13th Street
9 Modesto, CA 95351
10
11 Tel: (209) 522-5400
12 Fax: (209) 522-0407
13 Email: combslawyer@gmail.com
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